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THE LAW OF RELIGIOUS SOCIETIES AND CHURCH
CORPORATIONS IN OHIO.¹

THE history and law of religious societies and church corporations in the United States would form the subject of an instructive and useful work. It is not proposed to attempt this now, but only to present *some* features of the law of religious societies and church²

¹ This title has been adopted for the sake of brevity, and as perhaps sufficiently indicative of the purpose intended. The mode of acquiring, holding, managing and disposing of property for religious societies and churches, trusts for their use, and some legal and equitable principles and statutory provisions as to all these and other cognate subjects, will be considered. On this subject see Tyler's *American Ecclesiastical Law*: Albany, 1866; Vinton's *Manual, Commentaries on General Canon Law and Const. Prot. Episc. Church in the United States*; Hoffman on the *Law of the Church*; Duke on *Charitable Uses*; Shelford on *Mortmain*; Pennock's *Church Key*: Cambridge, Eng., 1870; Buck's *Ecclesiastical Law of Massachusetts*: Boston, 1866; Cripps' *Law of the Church and Clergy*: London, 1863; Hoffman's *Ecclesiastical Law of New York*, and other works cited in Vinton's *Manual*, IX.; Perry on *Trusts*; Hill on *Trustees*; Tiffany & Bullard on *Trusts*; Lewin's *Treatise on Trusts*; and various authorities cited in notes, *post*.

² Bouvier says: "*Church*. In a moral or spiritual sense this word signifies a society of persons who profess religion; and in a physical or material sense, the place where such persons assemble. The term church is *nomen collectivum*; it comprehends the chancel, aisles and body of the church. Ham. N. P. 204."

Webster gives ten definitions of the noun Church, including that of "a house consecrated to the worship of God among Christians;" "the collective body of Christians;" "a particular number of Christians united under one form of ecclesiastical government," &c.; "the followers of Christ in a particular city or province," &c.

Tertullian says: "*Ubi tres, ecclesia est, licet laici*." Wherever there are three,
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corporations in Ohio, as they exist by common law and equity principles, and by statutory regulations. In doing this, principles may be stated, to a limited extent, having a more or less general application in other states. The National and State

although of the laity, there is a church: 2 Clark's Com. 183, notes to xx Judges. See Presb. Conf. Faith 405-406, and notes referring to scripture for definitions of "Church."

For learned definitions and discussions of the term "Church," see this title in Buck's Theological Dictionary, Smith's Dictionary of the Bible, &c., and title "Congregation." Also, 5 Clark's Com., Matt. xvi. *in fine*; Acts ix. 31; Acts xix. *in fine*. See 19 Art. of Church of England; *Baptist Church v. Witherell*, 3 Paige 296; *Barber v. Failes*, 16 Mass. 498; Tyler's Am. Ecc. Law, §§ 828-9.

It has been said in a very valuable work, that "the only religious societies recognised in law are those which are incorporated." Tyler, § 102. It is not probable that this was intended to be literally correct in every respect. In some states there are statutes which affix penalties to disturbing their meetings: Ohio, Act Feb. 17, 1831; 29 vol. 161; S. & C. Stat. 448.

The members of a religious society might acquire property and have rights as a *quasi* partnership. *Gaselys v. Society*, 13 Ohio St. 144; *Christian Soc. v. Macomber*, 5 Mete. 155; *Weld v. May*, 9 Cush. 181; *Jests v. York*, 10 Id. 392; *Sawyer v. Baldwin*, 11 Pick. 492. And it will be shown that devises to unincorporated societies will often be sustained in courts of equity.

By the expression, "the law of religious societies," is meant the constitutional and statutory provisions and general common law and equity principles especially relating to such societies and those acting for them. There are for the purposes here intended two meanings attached to the words "religious societies." In one sense a "religious society" consists of a number of persons united by some understanding or arrangement to maintain religious worship or discussion, whether incorporated or not. *Baptist Church v. Witherell*, 3 Paige 296; 4 Wend. 494; 9 Id. 414; 4 Barb. S. C. R. 80; 11 N. Y. Rep. 243; 2 Kent's Com. 274.

It has been intimated that the phrase "religious society" is limited to a particular "voluntary association." Tyler's Am. Ecc. Law, § 100. But when we speak of the Society of Friends we may mean that denomination of Christians of whatever number of particular societies composed. Therefore, in another sense, a religious society is the collective body or aggregate of the different societies or congregations having a common or similar faith. The Ohio General Corporation Act of May 1, 1852, employs the terms "religious societies" in giving the power to create religious corporations; and this is the expression generally used in Digests.

The terms church and society are frequently used as synonymous. In addition to this, the noun "Church" designates a house used for worship or religious exercises. "Church corporation," in a comprehensive sense, includes, 1. The corporate organization of a particular religious society or church; 2. The general corporate organization, acting on behalf of or representing for religious purposes a collective aggregate of different religious societies having a common faith; and 3. Perhaps the different corporations under the patronage or control of a religious society, or organized to advance the objects of such society, for religious, benevolent, educa-

Constitutions, and the duplex character of government in the United States, give rise to questions which cannot be made under other and different forms of nationalities. Here power is partitioned between the National and State Governments. The National Constitution declares that,³ "no religious qualification or test shall ever be required as a qualification to any office or public trust under the United States;"⁴ and that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁵

tional, or charitable purposes. See note 26, *post*. The main design now is only to consider the first of these three classes of corporations.

³ Every clause of the Constitution of course has an object. The statute of 25 Charles II. required "an oath and declaration against transubstantiation, which all officers, civil and military, were formerly obliged to take, within six months after their admission." Webster Dic. "Test." This clause prohibited any religious test. Story's Const. §§ 184-754; Paschal's An. Const. n., 242-4; Blackst. Con. 44-53, 57; 2 Kent, Lect. 24-34, 35; Rawle's Const., ch. 10, p. 121.

The Articles of Confederation bound the states "to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion," &c. Art. 3.

And see Ordinance of Congress, July 13, 1787, Art. 3.

⁴ Const. Art. 6. *Ex parte Garland*, 4 Wallace 398; *Andrew v. Bible Society*, 4 Sandf. N. Y. 156; *Ayers v. M. E. Church*, 3 Id. 351.

⁵ Art. 1, Amendments; Pasch. An. Const. n. 245; 4 Wallace 398; 1 Kent 633 (11 ed., pt 4, Lect. 24); Story's Const. §§ 1870-9. The object of this was to prevent any *national* ecclesiastical establishment. In England the Establishment, or Established Church, was recognised and supported by the state: Story's Const., § 1877; 2 Lloyd's Debates 195-197. For a discussion of the subject, see 2 Kent's Com. (11 ed.) Lect. 24, pp. 35-37; notes 1, *a*, *b*, *c*, *d*; Rawle's Const., ch. 10, pp. 121, 122; Montesq. Spirit of Laws, B. 24, ch. 3, 5; 1 Tuck. Black. Com. App. 296; 2 Id. note G, pp. 10, 11; 4 Black. Com. 41-59; Lord King's Life of Locke 373; Jefferson's Notes on Virginia 264-270; Story's Const., §§ 1870-1879; *People v. Ruggles*, 8 Johns. 160; *Vidal v. Girard's Executors*, 2 How. 127.

Opinions of early statesmen as to an Established Religion: 1 Madison's Writings 13, 111, 116, 130, 140, 144, 148, 154, 159, 161, 163, 169, 175, 208, 214, 274; 3 Id. 179, 204, 242, 276, 307, 526, 543, 605; 4 Id. 342, 430, 478; 3 Works of John Adams 449-487; 4 Id. 367; 6 Id. 517; 7 Id. 173; 10 Id. 45, 56, 67, 82, 186, 188, 229, 235, 254; 1 Jefferson's Works 38, 39, 45, 174; 5 Jefferson 237; 8 Id. 113-137.

See Robertson's Hist. Charles V., ch. 5, pp. 54, 141, 315; *Lindennuller v. People*, 21 How. Pr. R. 156; *People v. Ruggles*, 8 Johns. 291.

For a discussion of the policy of a church establishment, see Buck's Theological Dictionary, title "Establishments," where it is said: "Should the reader be desirous of prosecuting the subject further, he may consult Warburton's Alliance between Church and State; Christie's Essay on Establishments; Paley's Moral

These provisions impose no limitation on the authority of the states ;⁶ but the XIVth article of amendments imposes a limitation

Philosophy, vol. 2, ch. 10 ; Bishop Law's Theory of Religion ; Watts's Civil Power in Things Sacred, third volume of his works ; Hall's Liberty of the Press, § 5 ; Conder's Protestant Nonconformity ; Mrs. H. Moore's Hints on Forming the Character of a Young Princess, vol. 2, p. 350 ; but especially Ranken and Graham's pieces on the subject, the former for and the latter against establishments.'"

⁶ *Livingston v. Moore*, 7 Pet. 551 ; *Fox v. Ohio*, 5 How. 434 ; *Dale v. Kimball*, 6 Maine 171 ; *Jones v. Carey*, 6 Id. 448 ; *Parish v. Wylie*, 43 Id. 387 ; Tyler's Ecc. L., ch. 25, cites *Osgood v. Bradley*, 7 Id. 411 ; *Fernald v. Lewis*, 6 Id. 264 ; *Anderson v. Brock*, 3 Id. 243 ; *First Parish v. Winthrop*, 1 Id. 208 ; *Richardson v. Brown*, 6 Id. 355 ; *Shapleigh v. Pillsbury*, 1 Id. 271 ; *Sewall v. Cargill*, 15 Id. 14, s. c. 19 Id. 288 ; *Bisbee v. Evans*, 4 Id. 374 ; *Cargill v. Sewall*, 15 Id. 288 ; *Parsonfield v. Dalton*, 5 Id. 217 ; *Cox v. Walker*, 26 Id. 504 ; *James v. Comm.* 12 S. & R. 221 ; *Bater v. People*, 3 Cow. 688 ; *Barron v. Mayor of Baltimore*, 7 Pet. 243 ; *Bonaparte v. C. & A. R. Co.*, Baldwin 220 ; Story's Const. § 1878 ; *Ex parte Garland*, 4 Wallace 397-399 ; *Permoli v. First Municipality*, 3 How. 589-609 ; 1 Kent 633.

In New Hampshire at one time a religious test was by the Constitution required, which excluded Catholics from office. And see 4 John Adams's Works 279 ; 1 Madison's Writings 162, 208, 214. And the Constitution of New Hampshire, Part 1, Art. 6, empowers the legislature to authorize towns, parishes, bodies corporate and religious societies to make provision, at their own expense, for the support and maintenance of public *Protestant* teachers of religion. Tyler, § 18. See Jones's Defence of North Carolina 317. The Constitution of North Carolina restricted offices to believers in the Protestant religion. In some of the colonies churches were established and supported by law. See Hoffman's Law of the Church 16, *et seq.*, and Vinton's Manual Prot. Episc. Ch. U. S. 2, *et seq.*, for a reference to the laws. See, also, 5 John Adams's Works, Appendix 495 ; 10 Id. 186. Tyler, ch. 24, cites 1 Colonial History of New York 124 ; 2 Id. 618, 653, 678, 692 ; 7 Col. Hist. N. Y. 586 ; 3 Id. 262, 372, 688 ; 4 Id. 426, Letter D. D. Barnard to New York Senate, March 1857 ; 3 Doc. Hist. N. Y. 111-114 ; 5 Col. Hist. 135-95, 838 ; 6 Col. Hist. 192 ; 1 Madison's Writings 162 ; 1 Jefferson's Works 38, 39, 45, 174 ; 5 Jefferson 237 ; 4 Id. 427 ; 7 Id. 170, 396 ; *Shrewsbury v. Smith*, 14 Pick. 297 ; *Baker v. Fales*, 16 Mass. 499 ; *Terrett v. Taylor*, 9 Cranch 43 ; *Pawlet v. Clark*, 9 Cranch 292 ; *Society, &c. v. Pawlet*, 4 Pet., 480 ; 1 Pet. Dig. 490 ; *Mason v. Muncaster*, 9 Wheat. 445 ; s. c. 2 Cr. C. C. 274 ; *Maun v. St. Johns*, 4 Cr. C. C. 116 ; *De Ruyter v. Trustees St. Peter's Church*, 3 Barb. Ch. 119 ; *Beebe v. Fales*, 16 Mass. 498 ; *Commonwealth v. Roxberry*, 9 Gray R. 504, and notes ; 1 Mass. Records 214, 384 ; 1 Trumbull's Hist. Conn. 100 ; 1 Bancroft's Hist. U. S. 124 ; Select Letters of Columbus, 3 Hakluyt, per Probisher in 1758, cited in Tyler's Ecc. L. ch. 1 ; 1 Kent's Com. 7 ed., 645-647.

Under the ordinance of Congress of May 20, 1785 (1 Laws U. S. 563), and Proceedings of Congress under the Articles of Confederation, July 23d, 26th and 27th, 1787, and the Act of April 21, 1792, the section 29 of land in each township in the "Ohio Company's Purchase" in Ohio is "given perpetually for the

on state authority by declaring that "no state shall enforce any law which shall abridge the privileges or immunities of citizens; nor shall any state deny to any person within its jurisdiction the equal protection of the laws."⁷

purposes of religion." See Act of Virginia, October session, 1783, Chancery Revised, 1 vol. L. U. S. 47.

The laws and proceedings of Congress on this subject are collated in Swan's Ohio Land Laws of 1823, pp. 15-25. Similar provision is made in "Symes's Purchase," Swan's Land Laws 26-34. The Ohio legislature has made provision for the sale of these lands, and for leasing those not sold. The proceeds of lands sold are invested in the sinking fund of the state, and interest thereon, and rents from lands leased applied to the support of religion. The Act of March 14, 1831, as to lands leased in the townships where these lands are, provides "that each and every denomination of religious societies, after giving themselves a name, shall appoint an agent, who shall produce to the trustees [of the township] a certificate containing a list of their names and numbers, specifying that they are citizens of said township; and the agent shall pay over an equal dividend of the rents, to be appropriated to the support of religion at the discretion of each society."

And it has been decided that "persons having no system of religious faith, written or traditional, cannot be deemed a denomination or sect." A library association is not a "religious society." *State v. Trustees*, 7 Ohio St. 58; *State v. Trustees*, 11 Id. 24; *Ohio v. Township Four*, 2 Id. 108. These lands are called "Ministerial Lands," and the fund arising therefrom the Ministerial Fund. See Mass. Stat. 1799, ch. 87, § 2; *Turner v. Burlington*, 16 Mass. 208; *Amesbury v. Weed*, 17 Id. 54; *Mason v. Whitney*, 1 Pick. 140; *Inglee v. Bozworth*, 5 Id. 501; *Ware v. Sherborn*, 8 Cush. 267. As to Louisiana, see *Church St. Louis v. Blanc*, 8 Rob. R. 52. Act of Congress, March 2, 1805; Ordinance of Congress, July 13, 1787.

⁷ Even before the adoption of this provision, the general sentiment of this country was that all men should be *protected by law* in the enjoyment of religious opinions, but that there should be no state aid or preference given to any. 3 Writings of Madison 179; 1 Jefferson's Works 39. "Let us remember," says Vattel, "that religion is no farther an affair of state than as it is exterior and publicly established: that of the heart can only depend on the conscience. * * It is a principle of fanaticism, a source of evils and the most notorious injustice, for weak mortals to imagine that they ought to take up the cause of God, maintain his glory by acts of violence, and avenge him on his enemies." "Let us only give to sovereigns," said a great statesman and an excellent citizen, "let us give them for the common advantage the power for punishing whatever is injurious to charity in society; it does not belong to human justice to become the revenger of the cause that belongs to God." Cicero, who was as able and as great in state affairs as in philosophy and eloquence, thought like the Duke of Sully. In the laws he proposed relating to religion he says, on the subject of piety and interior religion, "If any one commits a fault, God will revenge it;" but he declares the crime capital that should be committed against the religious ceremonies established for the public affairs, and in which the whole state is concerned. The wise Romans were very far from persecuting a man for his creed: they only required that people

Under this provision, perhaps no state could give any preference to any one class of persons because of their religious opinions over any other.

The question whether, or how far, the National Government could extend its protecting care in the states over the right of persons to enjoy religious opinions, has not been judicially determined : *Permoli v. First Mun.*, 3 How. 589-609 ; *Ex parte Garland*, 4 Wallace 399.⁸ It may derive some light from the discussions of the last few years in Congress.

There is no restraint upon the states in affording legislative protection to the enjoyment of religious privileges, equally to all persons, unless it should at some time be found after the exercise of such power by Congress in a form incompatible with that of a state.

The states have ample power to regulate and control the management of property for religious purposes. It is probable that all the states have made statutory provisions securing religious privileges, and for the management and control of property for religious purposes.¹⁰

Many if not most of such rights of person and property find protection and support in the principles of common law and equity jurisprudence. By the common law it is the right of natural persons to dispose of every kind of property by gift, sale or last will and testament, and it is the right of such persons, for themselves or as trustees, and of corporations within the scope of their powers, to receive the same for charitable uses, including purposes of religion.

In England, and in some of the states of our Union, these rights have been either aided or restrained by legislation.

The statutes which have imposed limitations of certain descrip-

should not disturb the public order." Vattel's Law of Nations, B. I., ch. xii., § 133. *Deorum injuria Diis curae*, was the maxim of the Romans. "Let the gods avenge their own wrongs." Ingersoll *arguendo*, in the Presbyterian Church Case, *Todd et al. v. Green et al.*, Sup. Ct. Pa., March 1839. As to Roman Toleration, 4 John Adams's Works 530. And see the provisions of the several state Constitutions, as to religious toleration. Tyler's Ecc. L., § 12, *et seq.*

⁸ These cases were prior to the XIVth Amendment to the Constitution.

⁹ See authorities cited in Lawrence's Rep. on New York Election Frauds, House Rep. 31, 3 Sess. 40th Congress, Feb. 23, 1869, p. 82.

¹⁰ Ohio Const. of 1802, art. viii., §§ 3-27 ; Ohio Const. of 1851, art. i., § 7 ; art. vi., § 2 ; art. xii., § 2.

tions upon the alienation of real estate for charitable uses, are known as *Mortmain Statutes*.¹¹

¹¹ The English Mortmain Statutes prohibited the conveyance or settlement of lands for charitable uses unless by deed made twelve months before the death of the donor or grantor. By the statute of 34 & 35 Hen. 8, c. 5, § 14, and the stat. 9 Geo. 2, c. 36, devises to charitable uses, with certain exceptions, are void. And see stat. 15 Rich. 2, c. 5; Williams' Real Prop. 72. These statutes have not been generally adopted in the United States: Williams on Real Prop. 66. See English Mortmain Act, 9 Geo. 2, c. 36; stat. 9 Geo. 4, c. 85; stat. 24 Vict. c. 9; 23 & 24 Vict. c. 134; 25 Vict. c. 17; 27 Vict. c. 13; 26 & 27 Vict. c. 106; 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; 14 & 15 Vict. c. 24; 15 & 16 Vict. c. 49; 22 Vict. c. 27; 17 & 18 Vict. c. 102; stat. 7 & 8 Wm. 3, c. 37; 1 Greenl. Cruise 53; stat. 19 & 20 Vict. 124; 20 & 21 Vict. c. 14; 21 & 22 Vict. c. 60; 25 & 26 Vict. c. 89; *Walker v. Richardson*, 2 Mees. & Welsb. 882; *Atty.-General v. Glynn*, 12 Sim. 84; *Ashton v. Jones*, 28 Beav. 460. For English restraining acts from *Magna Charta* to Victoria, see note *k* to p. 98 of Grant on Corporations, 1 Blackst. 479 n. See stat. 34 & 35 Hen. 8, c. 5, § 14; 43 Eliz. c. 4; stat. 9 Geo. 2, c. 36; stat. 15 Rich. 2, ch. 15; 6 Greenl. Cruise 16 and notes, and page 128, notes; where many authorities are collected, and the cases to which the stat. 9 Geo. 2 applies is stated; 2 Greenl. Roper on Legacies, ch. 19 (ed. of 1828); 1 Jarman on Wills 211, note; *Doe v. Wright*, 2 Barn. & Ald. 710. The Mortmain Statutes do not "mention personal property, and as to real estate the title of a corporation is valid until office found:" Williams on Real Prop. 72, Am. notes; Tayler Prec. Wills, 66 n.; *Potter v. Chapin*, 6 Paige 639; 2 Pet. 566; 3 Id. 99; 2 Myl. & K. 576; Shelford on Mortmain 8; *Runyan v. Coster*, 14 Pet. 22; 3 Binney 626; *Vidal v. Girard*, 2 How. 189; *Magill v. Brown*, Brightly R. 350; *Miller v. Leech*, 1 Wallace, Jr. 212; *Leazure v. Hillegas*, 7 S. & R. 321; *Methodist Church v. Remington*, 1 Watts 224; *Atty.-General v. Guise*, Vernon R. 266; Pa. Stat. of April 6th 1833, Purd. Digest 419; Dunlop's Digest, chap. 447, p. 567, 2d ed.; stat. of 1855, Purd. Dig., tit. Charities, 146; *Runyan v. Coster*, 14 Pet. 122; 1 Greenl. Cruise 54 n.; Angell & Ames on Corp., ch. v.; 2 Kent 282-3, and note. As to Ohio, BRINKERHOFF, J., said, in *American Bible Society v. Marshall*, 15 Ohio St., "There are no statutes of mortmain in this state. For myself, I heartily wish there were." As to New York, see *Robertson v. Bullions*, 1 Kernan 243; Hill on Trustees 467, note; 2 Kent 283; *Jackson v. Hartwell*, 8 Johns. 422; *Sutton v. Cole*, 3 Pick. 232; *Phillips Academy v. King*, 12 Mass. 546. Corporations created in one state may hold lands in another: 2 Kent 283; 14 Pet. 122; *Lathrop v. Bank of Sciota*, 8 Dana 114; *Bank Augusta v. Earle*, 13 Pet. 584; 4 Greenl. Cruise 22; *American Bible Society v. Marshall*, 15 Ohio St. 538. Mortmain stat. in force in Maryland: *Barnes v. Barnes*, 3 Cr. C. C. R. 269; *Newton v. Carberry*, 5 Cr. C. C. 632. By the common law it was incident to every corporation to have a capacity to purchase lands: 1 Blackst. 479; 10 Rep. 30; *Reynolds v. Comm's.*, 5 Ohio 209. The Statute of Wills of 34 Hen. 8, c. 5, prohibited devises to a corporation until the Stat. of Charitable Uses of 43 Eliz., c. 4, made exceptions, but these were narrowed by stat. 9 Geo. 2, c. 36. By many statutes from *Magna Charta*, 9 Hen. 3, c. 36, to 9 Geo. 2, c. 36, the right of corporations to purchase lands was taken away, except when authorized by license

Subject to the equal protection of the laws required by the National Constitution of every state for persons within it, there is no restriction upon the power of the states except such as may be found in their own constitutions and laws, as to the support by law of church or religious establishments. No state attempts now to support churches by taxation, nor is it probable that any such aid could, in the present state of public opinion, be received by law, even if state constitutions did not prohibit it.

How far the limitations of the National Constitution relating to a religious test for office, and the establishment and free exercise of religion, are applicable to the territories¹² of the United States,

from the king. "By the civil law a corporation was incapable of taking lands, unless by special privilege from the emperor:" Cod. 6, 24, 8. In the United States corporations are generally capable of holding real estate. See authorities: 6 Greenl. Cruise 16 note, and page 128, n.; 2 Kent 283; *Lumbard v. Aldrich*, 8 N. H. 31; *Schier v. St. Pauls*, 12 Met. 250; Angell & Ames Corp., ch. 5; *Gibson v. McCall*, 1 Rich. 174; *Reynolds v. Stark*, 5 Ohio 205; 2 Pet. 566; 3 Pet. 99; 2 Myl. & K. 576; 7 Cow. 540; 2 Id. 664; 2 Kent 283; 4 Id. 507; Jarman on Wills 57-197. There are restrictions in New York: 2 N. Y. Rev. Statute 118, s. 3 (3d ed.); *Theological Seminary v. Childs*, 4 Paige 422; *Wright v. Trustees M. E. Church*, 1 Hoff. Ch. R. 225; 4 Kent 507; Taylor Prec. Wills 67 n.; 4 Paige 419; *Potter v. Chapin*, 6 Paige 639. In Florida, Thomps. Dig. 279. In Georgia, Rev. Stat. 1845, p. 372. In Pennsylvania, by statute above referred to. In other states special charters make limitations. As to grants for charitable uses, see Statutes of Charitable Uses; 4 Greenl. Cruise 22, n.; *Vidal v. Girard*, 2 How. 127; *Baptist Association v. Hart's Ex'rs.*, 4 Wheat. 1; *Stanley v. Colt*, 5 Wall. 119; 6 Greenl. Cruise 16; stat. 43 Eliz. c. 4; stat. 9 Geo. 2, c. 36; Tiffany & Bullard on Trusts 232 and 238 n.; Story Eq., § 1162; Hill on Trustees 133; Duke on Charitable Uses; Dwight on Charitable Uses; Pratt on Charitable Uses; Sanders & Warner on Trusts; Lewin, Perry and Uslin on Trusts; Charitable Uses in Ohio; *Le Clerq v. Gallipolis*, 7 Ohio 217; *Bryant v. McCandless*, 7 Ohio, part 2, p. 135; *Webb v. Moler*, 8 Ohio 548; *McIntire v. Zanesville*, 9 Id. 203; 20 Id. 483; *Kemper v. Lane*, 17 Id. 293; *Urmey v. Wooden*, 1 Ohio St. 160; Id. 478; *Board of Education v. Edson*, 18 Id. 221; 7 Id. 58; 4 Ohio 515; 5 Id. 283; 6 Id. 363; 16 Id. 583; *Carder v. Comm's.*, 16 Ohio St. 353. The common law in relation to charities, as it existed prior to the 43 Eliz., c. 4, is in force generally. In Pennsylvania: *Magill v. Brown*, Bright. 346; 14 Haz. Pa. Reg. 305. In Ohio: *Perrin v. Carey*, 24 How. 465. The Statute of Elizabeth is not in force in Maryland: *Barnes v. Barnes*, 3 Cr. C. C. 269; *Baptist Association v. Hart*, 4 Wheat. 1; *Dashiell v. Attorney-General*, 5 H. & J. 392; 6 H. & J. 1. Nor in Virginia: *Wheeler v. Smith*, 9 How. 55; *Literary Fund v. Dawson*, 10 Leigh 147; *Gallego v. Attorney-General*, 3 Leigh 450; *Wheeler v. Smith*, 9 How. 55.

¹² Const. U. S. Art. 1, § 8. Also, Art. 4, § 3. See Appendix Cong. Globe, vol. 20, pp. 270, 273, 274; 2 Benton's Thirty Years' View 729-731; 2 Stat. at Large U. S. 242, § 2; 1 Pet. 511; 14 Id. 52; 4 How. 567; 19 Id. 393, 611; 2 Story's Const. (2d ed.) § 1328; 1 Kent 383; Rawle on Const., ch. 27, p. 237.

to the District of Columbia, and to places purchased in any state by consent of the legislature thereof, "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings," might give rise to some conflict of opinion. Churches erected on such lands would not be subject to taxation by state¹² authority, and perhaps not if erected on lands purchased by the United States for public purposes, even without the consent of the legislature.

But one church building has ever been erected from resources of the National Government.¹³

The National Government employs and pays chaplains for both branches of Congress, for the army and navy, &c.; and the states generally do the same in some of their benevolent institutions. Christianity has been judicially declared to be part of the common law of some of the states, while in others, as in Ohio, it has been determined otherwise.¹⁴ In Ohio, as in most of the states, the

¹² *U. S. v. Weise*, 2 Wall. Jr. 72; 7 Opin. Att.-Gen. 628; *U. S. v. Cornell*, 2 Mass. 60-91; 6 Opin. 577; *Comm. v. Young*, Brightly 302; *People v. Godfrey*, 17 Johns. 225; *U. S. v. Traver*, 2 Wh. Cr. Cas. 490; *People v. Lent*, Id. 548.

¹³ This was the church erected in 1870, at the Soldiers' Home, so called, near Dayton, Ohio. As to the title of this property, see *Sinks v. Reece*, 19 Ohio St. 213; *Renner v. Bennett*, 21 Id. 431.

¹⁴ 1 Bouv. Dic. 245, tit. Christianity; *Andrew v. N. Y. & P. B. S.*, 4 Sandf. N. Y. R. 182; *Ayers v. M. E. Church*, 3 Id. 377; *Updegraff v. Commonwealth*, 11 S. & R. 394; *Vidal v. Girard*, 2 How. 198; *Blair v. Odin*, 3 Texas 300; *Wheeler v. Moody*, 9 Texas 376; *Antoinettes v. Esclava*, 9 Porter 527; *Terrett v. Taylor*, 9 Cranch 43; Pasch. Const. n. 245; Pasch. An. Dig. n. 154; *McGatrick v. Wason*, 4 Ohio St. 571; *Cincinnati v. Rice*, 15 Ohio 225; 9 Ohio St. 439; *Bloom v. Richards*, 2 Id. 392; *Bogardus v. Smith*, 4 Paige R. 178; 11 Serg. & Rawle 394; 5 Binn. R. 555. New York: 8 Johns. R. 291; *Lindenmuller v. People*, 21 How. Pr. R. 156; s. c. 9 American Law Register 591, Old Series. Connecticut: 2 Swift's System 321. Massachusetts: Dane's Ab. vol. 7, ch. 219, a. 2, 19. To write or speak contemptuously and maliciously against it, is an indictable offence. Vide Cooper on the Law of Libel 59 and 114, *et seq.*, where he contends that the decisions which have been made declaring Christianity to be a part of the law, are the result of ignorance or falsehood. See, also, Mr. Jefferson's Letter to Major Cartwright, Appx. No. III. to Cooper's Law of Libel, on the same subject. Vide generally, 1 Russ. on Cr. 217; 1 Hawk. ch. 5; 1 Vent. 293; 3 Keb. 607; 1 Barn. & Cress. 26, s. c. 8 Eng. Com. Law R. 14; Barnard 162; Fitzgib. 66; Roscoe's Cr. Ev. 524; 2 Str. 834; 3 Barn. & Ald. 161; s. c. 5 Eng. Com. Law R. 249; Jeff. Rep. Appx. § 1, Cro. Jac. 421; Vent. 293; 3 Keb. 607; Cooke on Def. 74; 2 How. S. C. Rep. 127, 197-201. In 6 Jefferson's Works 303, &c., is a review of some authorities; Id. 312-319; Id. 66-291; 9 Id. 199-485. See Lawrence's Article on Law of Impeachments, Sup. to Globe, 1868, Trial of President 46, notes; Tiffany & Bullard's Trustees 778.

mode of *acquiring, holding, managing and disposing* of church property depends somewhat upon the *date and manner* of the organization of any particular church, because different statutes are applicable according to time or circumstances. When, therefore, information is desired upon these subjects, it is important first of all to ascertain to *which* of the *several classes* of church organizations such church belongs. These classes, as they have *generally* existed in Ohio, and doubtless in many if not most of the states, may be thus stated:—

I. *Unincorporated societies, with property conveyed to unincorporated trustees.*

There were many such prior to the Act of January 3, 1825;¹⁵ and their rights may yet continue; but this act has given the trustees, to some extent, a corporate¹⁶ capacity where lands and tenements are conveyed to some person or persons as trustee or trustees for the use of a church.¹⁷ The general understanding seems to have been that this act extends only to trusts for not more than twenty acres of land.

II. *Religious societies, incorporated by special charter or act of incorporation.*

There are many such yet in existence. They were created from the early settlement of the state until prohibited by the Constitution of 1851.¹⁸ Their rights yet continue under their charters, except in cases where they have accepted the provisions of other statutes.

III. *Unincorporated societies with corporate trustees.*

The Act of January 3, 1825, gives a corporate capacity to trustees holding church property not exceeding twenty acres. It applies to all *trustees* of the designated description¹⁹ prior to and since its date, unless they have acquired a corporate capacity under some more recent statute.²⁰ More titles are held for religious societies under this act than under all others. Under this act, too, there may be trustees for any incorporated as well as unincorporated society.

¹⁵ 2 Chace Stat. 1460; 1 Swan & Critchfield Stat. 305.

¹⁶ *Keyser v. Stansifer*, 6 Ohio R. 363; *Morgan v. Leslie*, Wright's R. 144; *Devoss v. Gray*, 22 Ohio St. ; *M. E. Church v. Wood*, Wright's R. 12.

¹⁷ *Devoss v. Gray*, 22 Ohio St. R.

¹⁸ Ohio Const., Art. xiii., § 1.

¹⁹ *Devoss v. Gray*, 22 Ohio St. R.

²⁰ Act May 1, 1852, § 66-71, 2 Curwen Stat. 1877; Act February 28, 1846, 2 Curwen 1255.

IV. *Societies incorporated by SPECIAL CHARTER to have the powers mentioned in GENERAL ACTS of the legislature.*

These commence under the Act of March 5, 1836,²¹ and continue to exist with all the powers conferred by that and the statutes creating them, unless in those cases where they have accepted the provisions of other more recent statutes.²²

V. *Societies incorporated under GENERAL STATUTES enacted prior to the Constitution of 1851, but WITHOUT SPECIAL ACTS of incorporation.*

These commence under the Act of March 12, 1844. None could perhaps be organized since the Act of May 1, 1852, though prior organizations continue under the laws authorizing their creation.

VI. *Societies incorporated under the General Corporation Act of May 1, 1852, and the amendatory acts.*

Now as to all these classes of churches, some of the questions of frequent occurrence are and may be considered under these heads:—

I. HOW MAY A CHURCH BE ORGANIZED?

II. HOW MAY CHURCH PROPERTY BE ACQUIRED AND TITLE HELD?

III. HOW MAY A CHURCH ORGANIZATION BE MAINTAINED, TRUSTEES BE APPOINTED, VACANCIES FILLED, ETC.

IV. THE MODE OF CONTROLLING CHURCH PROPERTY.

V. RIGHTS IN CASE OF A DIVISION OR DISSOLUTION OF A SOCIETY, RESULTING TRUSTS, FORFEITURE, ETC.

VI. THE POWER TO SELL AND MORTGAGE, AND THE MODE THEREOF.

VII. THE MODE OF TAKING AND COLLECTING CHOSSES IN ACTION IN FAVOR OF, AND OF PROSECUTING AND DEFENDING CHURCHES FOR THEIR LIABILITIES.

These do not comprehend *all* the forms of religious societies, but this view of those which have existed and do exist is sufficient for present purposes. In a subsequent chapter additional forms may be stated as capable of having an existence in some of the states.

A limited statement and discussion of some of the principles and statutes relating to these topics, with some forms for prac-

²¹ 2 Curwen Stat. 235.

²² Act May 1, 1852, § 66-67; 3 Curwen Stat. 1877; Act February 28, 1846; 2 Curwen 1255.

tical use in the organization and incorporation of religious societies, and for the conveyance or bequest to or for the benefit of such and other charitable associations, whether incorporated or not, will be hereafter presented.²³

These, though more especially applicable to Ohio, may in some measure aid the labors of the legal profession in other states in the examination of similar subjects there.

If to this could be added an outline of the general principles of ecclesiastical jurisprudence as administered in church judicatories, with appropriate forms of procedure adapted to the church government of the principal religious denominations, it would supply a want long felt.²⁴ This would not only be valuable to

²³ At the session of the Central Ohio Conference of the Methodist Episcopal Church, in September 1863, a committee was appointed "to examine and report how far the Discipline conforms to the law of Ohio in regard to the appointment of trustees and the holding of church property, and what change, if any, is necessary to make it conform with the statutes of Ohio in such cases:" Minutes, p. 7, Sept. 10th 1863. That committee made a report to the Conference at the September Session, 1864, when a committee was appointed, consisting of Rev. Alexander R. Harmount and William Lawrence, "to prepare a form of deed for the conveyance of real estate for churches and parsonages." Mr. Lawrence made a report to the Conference at Bellefontaine, Ohio, Sept. 2, 1865, a synopsis of which was soon after published in the *Western Christian Advocate*: Minutes, p. 4-32, Sept. 22, 1864. At the *General Conference* of the Methodist Episcopal Church in Brooklyn, May, 1872, the following proceedings were, among others, had:—On the 9th May 1872, a resolution was introduced by Wm. Lawrence, which was modified and adopted May 15, as follows:—

"*Resolved*, That the bishops be and are hereby required to appoint in each state and territory, and in the District of Columbia, one person, learned in the law, whose duty it shall be to furnish gratuitously to the Board of Church Extension a form of deed of conveyance for church lots, parsonages, cemeteries and other property forms of mortgages and bequests, and forms for legal incorporations; of churches, with such written suggestions in relation thereto as may be deemed desirable, and the Board of Church Extension, to whom such form and suggestions may be furnished, shall publish the same in such modes as it may deem advisable. And for the purpose of securing such advice as may be necessary in relation to the tenure of church property, the bishops shall from time to time fill any vacancy which may occur in any state or territory, or in the District of Columbia, among the legal advisers so appointed. It shall be the duty of such legal advisers to report to the Board of Church Extension from time to time any change made necessary by changes of law in relation to the tenure of church property:" Journal, pp. 124-229.

²⁴ Among the proceedings of the General Conference of the Methodist Episcopal Church at Brooklyn, May, 1872, is the following: May 9 1872, Wm. Lawrence submitted a resolution (Journal 125), which, in a modified form, was adopted May 21, as follows:—

the parties in church trials, and to those engaged in prosecuting or defending them, but to judicial courts and the legal profession. The efficacy or effect of such trials are sometimes drawn in review in the judicial courts.

It is a defence to an action for libel or slander, brought for words spoken or written addressed to the proper authorities of a religious society, that they were in good faith to bring the party

Buck, in his Theological Dictionary, title "Church," says, "Church officers are those appointed by Christ for preaching his word, and the superintendence of church affairs; such are bishops and deacons, to which some add elders. See these articles. See Campbell's Lectures on Eccl. History; Essay on the Church, in the Christian Magazine, vol. i.; Turner's Compendium of Social Religion; Glass' Works, vol. i.; Watts's Rational Foundation of a Christian Church; Goodwin's Works, vol. iv.; Torvett's Constitution and Order of the Gospel Church.' See Clarke Com. 215, 1 Cor. v., *in fine*. For works on Church Government see Archbishop Potter's Treatise on Church Government, Tucker's Treatise on Church Government. See Buck's Theological Dictionary, title 'Church of England.' The Church Disciplines and Confessions of Faith of different religious denominations."

Buck says, "Some of the most noted confessions are, the Thirty-nine Articles, and the Constitution and Canons of the Church of England; the Westminster Assembly's Confession of Faith; the Savoy Confession, or a declaration of the faith and order owned and practised in the congregational churches in England. See also, Corpus et Syntagma confessionum fides quæ in diversis regnis et nationibus ecclesiarum nomine fuerunt authenticè editæ, which exhibits a body of numerous confessions. See likewise an Harmony of the Confession of Faith of the Christian and Reformed Churches; Watts's Rational Foundation of a Christian Church, qu. 8; Graham on Establishments; p. 265, &c.; Bishop Cleaver's Sermon on the Formation of the Articles of the Church of England; Paley's Phil. vol ii. p. 221."

"Resolved, That the bishops be and are hereby requested to appoint a commission of six persons, three ministers and three laymen, whose duty it shall be to prepare gratuitously a succinct code of ecclesiastical jurisprudence and procedure, embracing the general principles applicable to church trials, which code shall be reported to the next General Conference:" Journal, p. 294.

The Western Christian Advocate of December 18, 1872, says: "In obedience to the action of the late General Conference, as set forth in the Journal of 1872 (p. 294), the following persons were appointed a commission to prepare a code of ecclesiastical jurisprudence, and report the same to the next General Conference, namely: Rev. John Miley, D.D., of the New York Conference; Rev. John B. Wentworth, D.D., of the Western New York Conference; Rev. Fernando C. Holliday, D.D., of the South-Eastern Indiana Conference; Hon. Wm. Lawrence, of Bellefontaine, Ohio; Hon. Daniel M. Bates, of Wilmington, Delaware, and Hon. George G. Reynolds, of Brooklyn, New York."

There is a work on this subject by the late Bishop Baker, of the Methodist Episcopal Church, and a Scotch work by Stewart & Pardovan.

suing to trial, according to the forms of such society of which he was a member.²⁵

And questions as to church trials may arise in various forms. But it is not proposed now to enter into these subjects. The legal and equitable principles relating to religious societies and church corporations will in general be applicable to societies and corporations under the patronage of different religious denominations, for the advancement of the cause of religion. The history and character of these would be instructive and useful.²⁵

²⁵ *Dial v. Halter*, 5 Ohio St. R.; *Townshend on Slander*, § 233; *Furnsworth v. Storers*, 5 Cush. 412; *Fairchild v. Adams*, 11 Cush. 549; *Jarvis v. Hathaway*, 3 Johns. 180; *Rex v. Hart*, 1 W. Blackst. 386, 2 Burn's Ecc. L. 779; *Holt v. Parsons*, 23 Texas 9; *O'Donoghue v. McGovern*, 23 Wend. 26; *Bradley v. Heath*, 12 Pick. 163; *Coombs v. Rose*, 8 Blackfd. 155.

²⁶ Among the corporations of this character are those of the Presbyterian Church in the United States of America, provided for in legislative acts as follow:—

I. "An Act for incorporating the Trustees of the Ministers and Elders constituting the General Assembly of the Presbyterian Church in the United States of America," approved March 28, 1799. Laws of Pennsylvania. See Rep. Presby. Church Case, 1839; *Todd v. Green*, 20 Res. Gen. Ass. Presby. Ch., adopted 1801; Ass. Dig. p. 198. Minutes, vol. 1, p. 252.

II. Act of the Legislature of New York, passed April 19, 1872, entitled "An Act to incorporate 'The Board of Home Missions of the Presbyterian Church in the United States of America,' and to enable the Presbyterian Board of Home Missions, formerly the Presbyterian Committee of Home Missions, to transfer its property to said new corporation, and to vest in such new corporation the corporate rights, franchises and privileges of the former body; and also to enable said new corporation to accept a transfer of the property of 'The Trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church in the United States of America,' and to become the legal successor of the said last-mentioned corporation." See Minutes of Gen. Ass. Presby. Ch., new series, vol. 2, 1872, p. 30.

III. Act of the Legislature of New York, passed April 12, 1862 (chapter 187), entitled "An Act to incorporate the Board of Foreign Missions of the Presbyterian Church in the United States of America." See 35 An. Rep. Bd. For. Miss., May, 1872.

IV. Act of the Legislature of New York of May 5, 1871, to incorporate "The Board of the Church Erection Fund of the General Assembly of the Presbyterian Church in the United States of America."

V. Act to incorporate "The Trustees of the Presbyterian Board of Publication."

VI. Act to incorporate "The Trustees of the Board of Education of the Presbyterian Church in the United States of America."

VII. The Committee on the Ministerial Relief Fund are not incorporated.

VIII. The Committee on Missions for Freedmen are not incorporated.

Corporations under the patronage of the Methodist Episcopal Church in the United

The same may be said of certain benevolent societies and corporations not distinctively religious, as the Ancient Order of Free

States.—Mr. Lawrence, of Ohio, made a report May 18, 1872, to the General Conference of the Methodist Episcopal Church, containing the following:—

“The special committee ‘appointed to consider and report concerning the relations of our various benevolent societies to the authorities of the Church, and whether any action is necessary, and if so what, to place them under the full control of the General Conference,’ have considered the subjects stated, and now report that there are five benevolent societies which have received the sanction of the General Conference, and with which it is more or less remotely connected, to wit:—

I. The Missionary Society of the Methodist Episcopal Church, incorporated by the legislature of New York, by “An Act to Incorporate the Missionary Society of the Methodist Episcopal Church,” passed April 9, 1839, amended by “An Act for the Relief of the Missionary Society of the Methodist Episcopal Church,” passed April 6, 1850; amended again by “An Act to amend ‘An Act to Incorporate the Missionary Society of the Methodist Episcopal Church,’ ” passed June 30, 1853. These were consolidated by “An Act to Consolidate the several Acts relating to the Missionary Society of the Methodist Episcopal Church into one Act, and to amend the same,” passed April 11, 1859. This was amended by “An Act to Amend the Charter of the Missionary Society of the Methodist Episcopal Church,” passed April 14, 1869.

II. The Church Extension Society of the Methodist Episcopal Church, incorporated by the legislature of Pennsylvania, by an act of incorporation approved March 13, 1865, amended by a supplementary act approved March 11, 1869. See Sixth Annual Report of Society for 1871, p. 16.

III. The Board of Education of the Methodist Episcopal Church, incorporated by the legislature of New York, by “An Act to Establish and Incorporate the Board of Education of the Methodist Episcopal Church,” passed April 14, 1869.

IV. The Sunday-School Union of the Methodist Episcopal Church, incorporated by the legislature of New York, by “An Act to Incorporate the Sunday-School Union of the Methodist Episcopal Church,” passed February 4, 1852.

V. The Tract Society of the Methodist Episcopal Church, incorporated by the legislature of New York, by “An Act to Incorporate the Tract Society of the Methodist Episcopal Church,” passed April 15, 1854.

VI. The corporation organized under the General Corporation Law of Ohio, May 1, 1852, and known as “The Board of Trustees of the General Conference of the Methodist Episcopal Church in the United States.” The certificate of incorporation in the office of the Secretary of State, at Columbus, Ohio, is dated February 28, 1865. This does not seem to come within the inquiry directed to be made by the committee. The board was organized on the 21st day of August, 1865, by the election of the following officers: Bishop D. W. Clark, president; M. B. Hagans, Esq., secretary, and Rev. Adam Poe, D.D., treasurer. The board is fully authorized “to receive and hold in trust for the benefit of the Methodist Episcopal Church, under the direction of the General Conference, donations, bequests, grants, &c., made to the Methodist Episcopal Church.”

VII.—VIII.—The two corporations, constituting what is known as “The Book Concern,” do not fall within the inquiry directed to be made by the committee.

IX. The Chartered Fund is controlled by a corporation, but it is not a benevolent society within the meaning of the resolution under which the committee were appointed.

and Accepted Masons, the Independent Order of Odd Fellows, and similar orders.

In the United States, as there is no church establishment or established religion by national authority, many of the various questions which have arisen and may arise in England, by reason of the church establishment there, cannot require judicial determination here, even in those places over which Congress has exclusive jurisdiction. So far as questions can arise growing out of the rights of religious societies, or their members, or the violation of these, there is under our national system no court especially having jurisdiction of such questions to the exclusion of all others. And these remarks now apply generally to the states of our Union.

In England, it was observed by Justice WHITLOCK, that "there is a *common law ecclesiastical* as well as our common law, *jus commune ecclesiasticum*, as well as *jus commune laicum*."²⁷

The existence of the "common law ecclesiastical" in England grew out of the established religion. It was not the canon law of continental Europe, but "an ecclesiastical law of which the general canon law is no doubt the basis, but which has been modified and altered from time to time by the ecclesiastical constitutions" of the archbishops and bishops and by Parliament.²⁸ This law of course required courts for its administration. These are known as the ecclesiastical or spiritual courts. Bouvier says: "Ecclesiastical courts in England are courts held by the king's authority as supreme governor of the church, for matters which chiefly concern religion. There are ten courts which may be ranged under this class.

X. The Freedmen's Aid Society of the Methodist Episcopal Church, incorporated under the Ohio Statute of May 1, 1852, by certificate in office of Secretary of State, dated November 1, 1870."

The New York corporations above mentioned have certain powers under a General Statute of New York, found in Part 1, Ch. xviii., Third title of Art. 3 of Laws of that state. See Journal of Gen. Conf., May, 1872, p. 272-295.

During the reign of William III., June 16, 1701, there was incorporated "The Society for the Propagation of the Gospel in Foreign Parts," with the exception of Maryland and Virginia, where the church was endowed. Its object was, "receiving and managing contributions for religious instruction of emigrants, maintenance of clergymen in the plantations, colonies, &c., and for the general propagation of the gospel." Hoffman's Law of the Church 25; Vinton's Manual 6.

²⁷ *Cowdry's Case*, 2 Coke R. 33.

²⁸ *Queen v. Mills*, 10 Clarke & Finelly 679; Spelman De Sepultura 179; 2 Atkyns 709; 3 Blackst. 62-69, 87-103.

- "1. The Archdeacon's Court.
- "2. The Consistory Court.
- "3. The Court of Arches.
- "4. The Court of Peculiars.
- "5. The Prerogative Court.
- "6. The Court of Delegates, which is the great court of appeals in all ecclesiastical causes.
- "7. The Court of Convocation.
- "8. The Court of Audience.
- "9. The Court of Faculties.
- "10. The Court of Commissioners of Review."

The jurisdiction of these courts is sufficiently stated by Blackstone and other writers, and fully appears in the reported cases.²⁹

²⁹ 3 Blackst. 87, *et seq.* See Vinton's Manual Com. Episc. Church in U. S. 34. A complete knowledge of the Church Establishment of England would require an examination of the histories and works and Acts of Parliament on that subject. See Judgment of Sir Robert Phillimore, Official Principal of Court of Arches, *Martin v. Mackonochie*, p. 8, 1868; Green's Ecc. Law Introd. 13; Gibson's Codex Introd. Dis. Pref. 10-11; Gibson's Codex, 1018, 1046, 1083; Wood's Inst. 504; 4 Ins. 340.

The English Ecclesiastical Reports are:—

Lee,	1833	2 vols. royal 8vo.	1752 to 1758
Haggard (Consistory)	1822	2 vols. royal 8vo.	1779 to 1821
Phillimore,		3 vols. royal 8vo.	1809 to 1821
Addams; and vol. 3, part 1,		2 vols. royal 8vo.	1822 to 1826
Haggard; and vol. 4, parts 1 and 2,		3 vols. royal 8vo.	1827 to 1833
Curteis,		3 vols. royal 8vo.	1834 to 1844
Notes of Cases in the Ecclesiastical and Maritime Courts,		7 vols. 8vo.	1841 to 1850
Robertson; and vol. 2, pts. 1 and 2,		1 vol. royal 8vo.	1844 to 1851
Spinks (Ecclesiastical and Admiralty),		2 vols. royal 8vo.	1853 to 1355
Deane,		1 vol. royal 8vo.	1855 to 1857
Irish Ecclesiastical:—			
Milward,		1 vol. royal 8vo.	1819 to 1843

For English Statutes, see 6 Ann. ch. 5; 13 Car. 2, ch. 4; 13 and 14 Car. 2, ch. 4; 6th Edward I., Edward III., 5th Edward VI.; 2 and 3 Edward VI., ch. 1; 1 Eliz. ch. 2; 13 Eliz. ch. 12; Henry I., A. D. 1108; Henry III., A. D. 1225; Henry VII., ch. 21; 24 Henry VIII., ch. 12; 25 Henry VIII., ch. 19; 26 Henry VIII., ch. 1.

"Ecclesiastical law," says Webster, is "a rule of action prescribed for the government of a church." It is that law which in England is administered in the Ecclesiastical Courts. As there is no Church Establishment and no Ecclesiastical Court in the United States, it can scarcely be said there is here any American ecclesiastical law—none in the sense of English ecclesiastical law. See cases cited, note 30, *post*; *Robertson v. Bullions*, 11 N. Y. (1 Kernan) 243; *Smith v. Nelson*, 18 Vt. 511-551; *Watson v. Avery*, 2 Bush. Ky. 332; 2 Kent 274; Tyler's Ecc.

So far as jurisdiction for the protection of rights or the redress of wrongs is afforded in the United States, either under national or state authority,³⁰ in relation to matters over which the spiritual courts in England took cognisance, it is exercised in the ordinary courts established by law.³¹

Law, § 104. For reference to history of religious corporations, see 1 Blackst. 469. As to the extent of the authority of the ecclesiastical law of England in the United States, see 1 Kent 472; 1 Chalmers' Opinion of Eminent Lawyers 194; *Gaskins v. Gaskins*, 3 Iredel's Law R. 155, N. C.

³⁰ The civil courts here do not generally re-examine determinations of ecclesiastical or church bodies relating to their internal affairs, made within the scope of their jurisdiction. But rights of property are subject to the civil courts: *Watson v. Avery*, 2 Bush (Ky.) § 332; *Tartar v. Gibbs*, 24 Md. 323; *Farnsworth v. Storrs*, 5 Cush. 412; *Shannon v. Froit*, 3 B. Monroe 253; *People v. Farrington*, 22 How. Pr. 294; *Robertson v. Bullions*, 11 N. York (1 Kernan) 243; 2 Kent 274; Tyler, § 104; Hoff. Ecc. L. N. Y. 275; *Smith v. Nelson*, 18 Vt. 511; Hoffman's Law of Church 467; Buck's Mass. Ecc. L. 213; *Brunnemayer v. Buhr*, 32 Ills. 183; Vinton's Manual Canon Law 112; *Ref. Prot. Dutch Church v. Bradford*, 8 Cow. 451; *Harman v. Desher*, 1 Spear Eq. R., South Car. 90; *First Presby. Church v. Cong. Society*, 23 Iowa 567; *Chase v. Cheney*, 10 American Law Register (New Series) 295, and the learned notes appended thereto.

³¹ The importance of a correct understanding of this subject will be apparent from the magnitude of the legal rights of person and of property involved. The following statistical table of the number of church organizations, edifices, sittings and value of property in the United States in 1870, may be found of some value:—

DENOMINATIONS.	Organizations.	Edifices.	Sittings	Property.
ALL DENOMINATIONS.....	72,459	63,082	21,665,062	\$354,483,581
Baptist, (regular).....	14,474	12,857	3,997,116	39,229,221
Baptist, (other).....	1,355	1,105	363,019	2,378,977
Christian.....	3,578	2,822	865,602	6,425,137
Congregational.....	2,887	2,715	1,117,212	23,069,698
Episcopal, (Protestant).....	2,835	2,601	991,061	36,514,549
Evangelical Association.....	815	641	193,796	2,301,650
Friends.....	692	662	224,664	3,939,560
Jewish.....	189	152	73,265	5,165,234
Lutheran.....	3,032	2,776	977,332	14,917,747
Methodist.....	25,278	21,337	6,528,209	69,854,121
Miscellaneous.....	27	17	6,935	135,650
Moravian, (Unitas Fratrum).....	72	67	25,700	709,100
Mormon.....	189	171	87,838	656,750
New Jerusalem, (Swedenborgian).....	90	61	18,755	869,700
Presbyterian, (regular).....	6,262	5,683	2,198,900	47,828,732
Presbyterian, (other).....	1,562	1,388	499,344	5,436,524
Reformed Church in America, (late Dutch Reformed).....	471	463	227,228	10,369,255
Reformed Church in the United States, (late German Reformed).....	1,256	1,145	431,700	5,775,215
Roman Catholic.....	4,127	3,806	1,990,514	60,985,566
Second Advent.....	225	140	34,555	306,240
Shaker.....	18	18	8,850	86,900
Spiritualist.....	95	22	6,970	160,150
Unitarian.....	331	310	155,471	6,282,675
United Brethren in Christ.....	1,445	937	285,025	1,819,810
Universalist.....	719	602	210,884	5,692,325
Unknown, (Local Missions).....	26	27	11,925	687,800
Unknown, (Union).....	409	552	153,202	965,295

The National Government has duties and powers in the Ter-

The "Miscellaneous" are, California: Chinese, organizations, 7; edifices, 5; accommodation, 2600; property, \$22,500. Greek, 2; property, \$6000.—Connecticut: Bible Communists, organization, 1; Catholic Apostolic, organization, 1; Sandemanian, organization, 1; edifice, 1; accommodation, 85; property, \$1350. Illinois: Catholic Apostolic, organization, 1; edifice, 1; accommodation, 350; property, \$2000.—Massachusetts: Catholic Apostolic, organization, 1; Plymouth Church, organization, 1.—New York: Bible Communists, organizations, 2; Catholic Apostolic, organizations, 2; edifices, 2; accommodation, 1000; property, \$30,600.—Pennsylvania: Bible Christians, organization, 1; edifice, 1; accommodation, 300; property, \$30,000; Schwenkfelder, organizations, 6; edifices, 6; accommodation, 2200; property, \$33,200.—South Carolina: Huguenot, organization, 1; edifice, 1; accommodation, 400; property, \$10,000.

Some of the denominations above mentioned are divided and subdivided into separate distinctive religious bodies.

Thus, in an address by William Lawrence, June 9th 1872, in the General Conference of the Methodist Episcopal Church of that year, it is said:—

"But the Methodist Episcopal Church, with Annual Conferences, and ministers, and membership, as I have described them, are not all of Methodism in the United States. In 1844 most of the Southern Annual Conferences withdrew, and organized the Methodist Episcopal Church South, under a General Conference, then having 1345 travelling preachers, 3166 local preachers, and 495,288 members; and this organization, with increased power and members, is maintained with its bishops in the Southern States: *Smith v. Swormsted*, 5 McLean 369. Then there is in the United States the African Methodist Episcopal Church, with bishops and General and Annual Conferences, and a membership and preachers of people of African descent. But notwithstanding this, most of the churches in the South, composed of colored members, belong to Annual Conferences under the General Conference of the Methodist Episcopal Church, and their colored ministerial and lay delegates were present at Brooklyn, where all, animated by the hope of reaching one common heaven, recognised a perfect equality of church and conference rights without distinction on account of color. Then in the United States there are the Methodist Protestant Church, the Methodist Church, the True Wesleyans, the United Brethren, the Evangelical Association, or, as it is sometimes called, the German Methodist Church, and the Albright's, all Methodistic in their faith and practice."

A comparison of the value of church property with the total aggregate wealth of all the people, shows how large a portion of it is subject to the law of religious societies and church corporations.

For ecclesiastical histories, see Eusebius's *Eccl. History*, with Valesius's notes; Baronii *Annals Eccl.* Spondani *Annales Sacri*; *Parii Universalis Hist. Eccl.* Lampe, Dupin, Spanheim, and Mosheim's *Eccl. Hist.*; Fuller's and Warner's *Eccl. Hist. of England*; Jortin's *Remarks on Eccl. Hist.*; Millar's *Propagation of Christianity*; Gilliee's *Historical Collections*; Dr. Erskine's *Sketches*, and Robinson's *Researches*. The most recent are, Dr. Campbell's, Gregory's, Milner's and Dr. Howeis's, all which have their excellencies. See also Bogue and Bennett's *History of the Dissenters*. For the history of the church under the Old Testament, the reader may consult Miller's *History of the Church*; Prideaux's and Shuckford's *Connections*; Dr. Watts's *Scripture History*, and Fleury's *His-*

ritories and in relation to the religious privileges of citizens, growing out of International or Public Law.^{31a}

tory of the Israelites. For the origin and process of the Reformation, see Dr. Jortin's Charge on the Use and Importance of Ecclesiastical History, in his works, vol. ii., ch. 2. See Buck's Theological Dictionary, title Ecclesiastical History.

^{31a} The Constitution declares, "Congress shall make no law * * * prohibiting the free exercise of" religion. For a discussion of the power of Congress to prohibit or punish polygamy when practised by those who do so as an act of religious faith and belief, see Reports of Committees, Report No. 27, 39th Congress, 2d Sess., Vol. 3; Rep. 96, 1st Sess. 39th Congress, Vol. 1; Act of Congress of July 2, 1862, to punish and prevent Polygamy, &c., Globe, 2d Sess. 37th Congress, House, pp. 1581, 1847, 2587, 2766, 2769, 2906, 3023, 3082; Senate, 1854, 2031, 2506, 2916, 3010, 3088. Globe, 2d Sess. 41st Congress, House, 241, 369, 920, 5602, 5616, 5620, 1009, 1338, 1367, 1517, 1607, 2142, 2150, 2178, 2181; Senate, 3, 27, 236, 264, 2896, 4308; Hooper's Speech, Appx. 173. For House Reports in Congress in relation to Churches, &c., see Reports, Vol. 2, Report No. 307, 1st Sess. 26th Congress, St. Philip's Church, Charleston, S. C.; Vol. 2, No. 475, 2d Sess. 27th Congress, same church; Vol. 1, No. 19, 3d Sess. 27th Congress, St. Peter's Church, Philadelphia; Vol. 5, No. 1081, 2d Sess. 27th Congress, Presbyterian Church, Yorktown, N. Y.; Vol. 2, No. 262, 3d Sess. 27th Congress, same church; Vol. 2, No. 259, 3d Sess. 27th Congress, church at Elizabethtown, N. J.; Vol. 1, No. 81, 1st Sess. 39th Congress, Baptist and United Brethren Church; Vol. 1, No. 145, 2d Sess. 35th Congress, Missionary Society M. E. Church; Vol. 1, No. 16, 1st Sess. 30th Congress, Protestant University, U. S.; Vol. 3, No. 168, 1st Sess. 20th Cong. Incorporated Sisters of Visitation; Vol. 3, No. 167, 1st Sess. 20th Cong. Sisters of Charity, Colonization Society, 1st Sess. 16th Cong. Rep. No. 38; Rep. No. 35; 2d Sess. 16th Cong. Rep. No. 40, 1st Sess. 16th Cong.

It will be seen by the law of nations the government is not liable to pay for churches destroyed by military operations. For a discussion on this subject, see debates in 3d Sess. 41st Congress on bill for relief of J. Milton Best, and debates on similar bills since and the several veto messages of President Grant.

A question has been made as to the duty of our government to protect its citizens in the freedom of religious worship while sojourning within the jurisdiction of a foreign friendly power: Executive Doc., No. 57, 2d Sess. 39th Cong., vol. 10; Ex. Doc., No. 115, 2d Sess. 39th Cong., vol. 11; Ex. Doc., No. 6, 1st Sess. 40th Cong. vol. 1.

On the 24th January 1867, the National House of Representatives by resolution requested the President to communicate information "in relation to a removal of the Protestant Church or religious assembly meeting at the American embassy, from the city of Rome, by an order of that government."

The information is contained in the documents above referred to.

Rufus King, minister-resident at Rome, in a despatch, Feb. 18th 1867, said, "The laws of Rome do not tolerate any other form of public religious worship than such as conforms to the teachings of the Roman Catholic Church, but the right of any foreign minister at the Papal Court to hold religious services under his own roof, and in accordance with the forms of his national or individual faith, has never been questioned or interfered with." And he says, "it was intimated

Upon any of these subjects it would be difficult to write a *perfect* law-book. Such a work should state the *origin* and *history* of every material principle or rule of common or equity law, including any fluctuations or changes by judicial determination or by statute, with the *reasons* on which each might rest, both in England and

to the ministers of two Scotch congregations that their services were contrary to law, and must be held outside the walls. They transferred them accordingly."

Since that time Pius Ninth has been dethroned as to his temporal power.

It is only just, however, to the unfortunate pontiff to state the rule of international law on this subject, as follows: "A minister-resident in a foreign country is entitled to the privilege of religious worship in his own private chapel, according to the peculiar form of his national faith, although it may not be generally tolerated by the laws of the state where he resides:" Wheaton's Elements of International Law, 6th ed., 304. International law does not seem to extend protection to worshippers elsewhere than at the residence or private chapel of the government's minister-resident.

It is competent for nations to make treaty stipulations securing freedom of religious worship, unless there be in any nation limitations on the treaty power in that respect. Our government should at once secure for our citizens religious privileges abroad. The treaty of April 30th 1803, with the French republic, stipulated that the inhabitants of the Louisiana territory ceded to the United States should be admitted as soon as possible as citizens, and in the meantime "be maintained and protected in the free enjoyment of * * * the religion which they profess." 8 U. S. Stat 202, art. 3.

The treaty of Guadalupe Hidalgo with Mexico, of February 2d 1848, provides that in case of war, "all churches, hospitals, schools, colleges, libraries and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties and the pursuit of their vocation." And see Globe, vol. 60, p. 2906.

The treaty with Tripoli, November 4, 1796, contains this provision: "*As the Government of the United States is not, in any sense, founded on the Christian religion*—as it has in itself no character of enmity against the laws of religion or tranquillity of Mussulmen—and as the said States never have entered into any war or act of hostility against any Mahometan nation, it is declared by the parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between these two countries." 8 U. S. Stat. 155.

For correspondence relative to protection of Christians in Japan, see "Papers relating to the Foreign Relations of the United States," sent to Congress with President's message, Dec. 5, 1870, p. 456. And see as to protection elsewhere, pp. 453 to 486.

On 10th June 1872, Mr. Fish, Secretary of State, instructed our Minister in Greece to "maintain the rights of citizens in the exercise of their religion as guaranteed by the Constitution of Greece," p. 249. He also on 22d July 1872, addressed our Minister at Rome in behalf of "the inhumanly persecuted Hebrews in Moldavia and Wallachia," p. 319.

Numerous Indian treaties have given lands for churches and religious purposes, generally authorized or ratified by Act of Congress to give the grants validity.

the United States. Where a rule originated in England, it should be shown how far it is adapted to the circumstances and condition of the places over which Congress exercises exclusive jurisdiction, and to the states of the Union respectively. Illustrations of the rule, with cases showing its application, would of course be necessary. The exceptions, if any, to the general rules should be stated, with the reasons on which they rest. Foot-notes to the text might appropriately give the cases in chronological order, decided in each state, alphabetically arranged, with any exceptions peculiar to any state, and the reasons thereof, and in like chronological order, any constitutional or statutory modifications thereof. It should contain a perfect bibliography of all works on the subject. Such a work would require profound thought, patient and careful investigation, and a precision of statement for which law-books are more distinguished than any other. It is not proposed to attempt this now. A work which throws into an elementary form a mere statement of what has been decided, without distinguishing between principles of general common law and those resting on local reasons or statutory modifications, or without giving the reasons on which decided cases rest, is destitute of legal science, and tends to confuse the mind of the tyro if not of the learned and profound in the profession.

No one lawyer can prepare a work of undoubted authority or value, resting merely on statutes of different states and local decisions.

It is better to classify and arrange, in legal and scientific form, general common-law and equity principles, and leave the consideration of local statutory and judicial modifications to the learned of the profession in each state.³² Statutes change so frequently, that an attempt to put them in elementary form is more liable to mislead than aid those who are in pursuit of knowledge. Any attempt to

³² It may be remarked here, as Bouvier has said, that "it is not within the plan of this work to give an account of the different local regulations in the United States respecting churches. References are here given to enable the inquirer to ascertain what they are, where such regulations are known to exist. 2 Mass. 500; 3 Id. 166; 8 Id. 96; 9 Id. 277; Id. 254; 10 Id. 323; 15 Id. 296; 16 Id. 488; 6 Id. 401; 10 Pick. 172; 4 Day, C. 361; 1 Root, § 3, 440; Kirby 45; 2 Caines' Cas. 336; 10 John. 217; 6 Id. 85; 7 Id. 112; 8 Id. 464; 9 Id. 147; 4 Dessaus. 578; 5 Serg. & Rawle 510; 11 Id. 35; Metc. & Park. Dig. h. t. See Tyler's Ecc. Law, *passim*.

enable those who are unlearned in the law to do the work of a lawyer, is worse than useless. No man can master all professions and arts.

The duties of each profession, art, or business, should be performed by those who understand them.

WM. LAWRENCE.

BELLEFONTAINE, O.

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

WILLIAM A. STUDWELL v. AUSTIN H. COOKE.

By the strict rules of law a tender of performance, as incident to the legal duty to perform, could not anciently be made after the day fixed for performance, and before suit brought.

A different rule was adopted early in this state, *Tracy v. Strong*, 2 Conn. 659, and a tender may be made here at any time after the breach, and before the commencement of the action.

Costs are not incident to the debt, or to the action until it is pending, and although expense may have been made preparatory to its commencement, the plaintiff has no right to demand costs for that reason, nor is the defendant obliged to tender them until they become thus incident by the commencement of the action, which in this state is the actual service of process on the defendant.

There is no equity in favor of a creditor to require a debtor to pay the expenses of proceedings taken for the institution of a suit, before its actual commencement, so strong as to prevail over the right of the debtor to make tender of the debt.

No right to costs by reason of an equity has ever been recognised by the common law, and a court of law cannot yield to such an equity without a departure from principle.

From a review of the authorities in England and in this country, it appears that every attempt which has been made to induce courts of law to recognise such an equity, and to require payment of costs before suit pending, has failed.

Therefore, where in foreign attachment, after service on the garnishee, but before service on the defendant, the defendant tendered to the plaintiff the amount of the debt alone, without the costs of the suit, it was held that such tender was sufficient.

GENERAL ASSUMPSIT; appealed from the judgment of a justice of the peace to the Court of Common Pleas, and tried on the general issue closed to the court with notice of tender.

Philip B. Lever, of Stamford, in Fairfield county, on the 1st